TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 116.

ROBERT W. FOSTER, PLAINTIFF IN ERROR,

vs.

THE MASTER AND WARDENS OF THE PORT OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 12, 1874.

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SUPREME COURT OF LA.

Filed July 8th, 1873.
(Signed) M. P. JULIAN,
Depy. Clerk.

State of Louisiana, superior district court for the parish of Orleans.

MASTER & WARDENS OF THE PORT OF NEW Orleans
vs.
ROBERT W. FOSTER. } No. 2885.

Henry C. Dibble & E. C. Billings for plaintiffs and appellees.
E. D. Craig for defendant & appellant.

1 State of Louisiana, superior district court for the parish of Orleans.

MASTERS AND WARDENS FOR THE PORT OF New Orleans
vs.
ROBERT W. FOSTER. } No. 2885.

Petition for injunction.—Filed April 12th, 1873.

To the honorable the judge of the superior district court for the parish of Orleans:

The petition of L. W. Sewell, Paul H. Dejoie, Moses Briggs, respectfully represents that L. W. Sewell has been commissioned and has duly qualified as master-warden for the port of New Orleans, and that petitioners Paul H. Dejoie and Moses Briggs have been duly commis-
2 sioned and have qualified as wardens of the port of New Orleans, and that, together, petitioners compose the board of master and wardens of the port of New Orleans under and by virtue of said appointments by the governor of the State and the provisions of section 2217 of the Revised Statutes.

Petitioners further represent that by the provisions of No. 68 of 1869, approved March 6th, 1869, it is made the duty of the master and wardens of the port of New Orleans to offer their services to make a survey of the hatches of all sea-going vessels which may arrive at said port.

Petitioners show that by the provisions of said act a penalty is imposed upon the master and wardens if they neglect to so attend to make said survey.

Petitioners now further show that it is provided in the second section of said act of 1869, "that it shall be unlawful for any person other than the said master and wardens, or their legally-constituted deputies, to make any survey of hatches of sea-going vessels coming into the said port of New Orleans, or to make any survey of damaged goods coming on board such vessel, whether such survey be made on board or on
3 shore, or to give certificates or orders for the sale of such damaged goods at auction, or to do any other of the acts or things pre-

scribed by law for the said master and wardens to do and perform; and the person doing said illegal and forbidden acts, his instigators and encouragers, shall be liable and bound to pay, in solido, to the said master and wardens one hundred dollars' damages, with costs, for each of said illegal acts so done."

Petitioners now further show that one Robt. W. Foster, who resides in this city, has been continuously violating the said provisions of said statute, and has been engaged, and is now engaged, in making surveys of hatches of sea-going vessels arriving in this port, and of damaged goods, and has been, and is now, engaged in acting as, and performing the duties which belong to, the master and wardens of the port of New Orleans.

Petitioners show that the said Foster publicly holds himself out as a "marine surveyor," and openly claimed the right to perform all
4 the acts prohibited by the aforesaid provisions of said act; all of which will be fully shown on the trial of this cause.

Petitioners now further aver that if the said Robt. W. Foster is permitted to continue in his violation of the aforesaid provisions of said act of 1869, petitioners will be damaged by the loss of fees to an amount exceeding five hundred dollars, by loss of fees, and will suffer irreparable injury.

Petitioners show that, by reason of the frequent violation of the aforesaid provisions of said act of 1869, the said Foster has become responsible to petitioner' in damages to a large amount, for which petitioners reserve the right to sue.

Petitioners now aver and show that they have no adequate remedy against the injury which the said R. W. Foster is now inflicting upon them except they obtain a writ of injunction from this honorable court to enjoin and restrain the said Foster from acting or pretending to act as the warden of the port of New Orleans, or as a marine sur*geon*, in any manner calculated to interfere with the duties of the master
5 and wardens of the port of New Orleans, and especially from making any survey of the hatches or of the goods which have arrived or may arrive upon any sea-going vessel arriving at the port of New Orleans, making or giving any certificates of any survey.

Wherefore, the annexed bo*u*nd and affidavit considered, petitioners pray that a writ of injunction may issue from this honorable court enjoining and restraining Robt. W. Foster, defendant, from making any survey of the hatches of any sea-going vessel which may have arrived and which may arrive at the port of New Orleans; from making any survey, either on board or on shore, of any damaged goods which may have arrived, or which may arrive, on any such sea-going vessel, and enjoining and restraining him, the said Foster, from giving any certificates of any survey, and from doing any act which the master and wardens are authorized by law to perform.

Petitioners pray that the said Robt. W. Foster may be cited
6 to appear and answer this petition, and that, after due proceedings had, this injunction may be made perpetual.

Petitioners pray for general relief and costs.

(Signed) HENRY C. DIBBLE,
Attorney for Petitioners.

(Signed) E. C. BILLINGS,
Of Counsel.

Affidavit.

Paul H. Dejoie, on his oath, says that the above and foregoing petition is true, to the best of his information and belief.

(Signed) PAUL H. DEJOIE.

Sworn and subscribed to before me this 12th day of April, 1873.

[SEAL.] (Signed) JOSHUA CORPREW,
D'y Clk.

Order of injunction.—Issued April 12, 1873.

Let a writ of injunction issue as herein prayed for and according to law, upon pltffs.' giving bond, with good and solvent security, in the sum of five hundred dollars, conditioned as the law directs.

7

New Orleans, April 12th, 1873.

(Signed) JACOB HAWKINS, *Judge.*

Bond for injunction.—Filed April 12th, 1873.

Know all men by these presents that we, L. W. Sewell, Paul H. Dejoie, and Moses Briggs, as principals, and Leonard Sewell, as surety, of the city of New Orleans and State of Louisiana, are held and firmly bound unto Robert W. Foster, his executors, administrators, heirs, and assigns, in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said Robert W. Foster, his executors, administrators, heirs, and assigns; for which payment, well and truly to be made to the said Robert W. Foster, his executors, administrators, heirs, and assigns, we bind ourselves, in solido, and each of us by himself, and each of our executors, administrators, heirs, and assigns, firmly by these presents, sealed with our seals, and dated the twelfth day of April, 1873.

8

Whereas the said L. W. Sewell, Paul H. Dujoie, and Moses Briggs have this day presented a petition to the honorable the superior district court for the parish of Orleans, praying for a writ of injunction to issue against the said Robert W. Foster:

Now, the condition of the above obligation is that we, the above-bound Sewell, Dejoie, and Briggs, principals, and Leonard Sewell, surety, will well and truly pay to the said Robert W. Foster all such damages as he may recover against us in case it should be decided that the said injunction was wrongfully obtained.

(Signed) L. W. SEWELL,
MOSES BRIGGS, AND [L. S.]
PAUL H. DUJOIE.

(Signed) L. SEWELL. [L. S.]

Signed, sealed, and delivered in the presence of—

(Signed) HENRY C. DIBBLE.

Writ of injunction.—Issued April 14th, 1873.

9

State of Louisiana, superior district court for the parish of Orleans.

MASTER & WARDENS, PORT OF NEW ORLEANS
vs.
ROBT. W. FOSTER. } No. 2885.

To Robt. W. Foster, greeting:

You are hereby commanded, enjoined, and restrained in the name of

the State of Louisiana, and of the superior district court for the parish of Orleans, from making any survey of the hatches of any sea-going vessel which may have arrived, and which may arrive, at the port of New Orleans, and you are further enjoined from making any survey, either on board or on shore, of any damaged goods which may have arrived or which may arrive on any such sea-going vessel; and you are still further enjoined and restrained from giving any certificate of any survey, and from doing any act which the master and wardens are authorized by law to perform.

And you are so enjoined, and until the further order of this honorable court.

Witness the honorable Jacob Hawkins, judge of our said court, at the city of New Orleans this 14th day of April, in the year of our Lord eighteen hundred and seventy-three, and in the ninety-seventh year of the Independence of the United States.

[SEAL.] (Signed) JOSHUA CORPREW,
D'y Clerk.

Sheriff's return on writ of injunction.—Filed April 18th, 1873.

Received April 14th, 1873, and on the 18th day, same month and year served a copy of the within writ of injunction on Robert W. Foster, deft. herein, in person.

Ret. same day.

(Signed) FRANK PFISTER,
D'y Shff.

Citation.—Issued April 14th, 1873.

State of Louisiana, superior district court for the parish of Orleans.

MASTER AND WARDENS OF THE PORT OF NEW Orleans *vs.* ROBT. W. FOSTER. } No. 2885.

MR. ROBERT W. FOSTER, *New Orleans, La.:*

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the superior district court for the parish of Orleans in ten days after the service hereof.

Witness the honorable Jacob Hawkins, judge of the said court, the fourteenth day of April, in the year of our Lord, 1873.

(Signed) GEO. W. FLYNN,
D'y Clerk.

Sheriff's return on citation.—Filed April 18th, 1873.

Received April 14th, 1873, and on the 18th day, same month and year, served a copy of the within citation and accompanying petition on Robert W. Foster, defendant herein, in person.

Ret. same day.

(Signed) FRANK PFISTER,
D'y Shff.

Answer and reconventional demand.—Filed April 28th, 1873.

L. W. SEWELL, PAUL H. DUJOIE, AND MOSES Briggs, *vs.* R. W. FOSTER. } No. 2885.

Now comes A. W. Foster, made defendant herein, and, for defence to the matters and things contained in plaintiff's demand, says:

That plaintiffs have disclosed no legal grounds of action whereon to base their claim for damages and their injunction; that said injunction was illegally and improvidently issued by this court.

13 Defendant denies that he has sought in any manner to interfere with the prerogatives and rights of plaintiffs; that he has not acted, nor does he propose to act, in any capacity as officer of the State.

This defendant further says that he has been engaged for many years by the underwriters and ship-owners of this city in the capacity of an expert, or inspector of damaged goods, and in matters of a marine character, and in so doing has followed out his inalienable right to make an honest livelihood by his skill and labor, in no instance violating the laws or public policy.

This defendant, by reason of his superior experience pertaining to marine matters, enjoys the confidence of the commercial community of the city of New Orleans, and is often called by all the parties in interest to inspect damaged goods and vessels and report upon them, but has never sought or claimed to give legal effect to said acts as when performed by officers of the State; that the appointees to the office of master

14 and wardens are the appointees made from motions of political necessity, and not from the capacity and fitness of the parties appointed; that no law can compel private citizens to employ said wardens and master when all parties in interest do not wish their services in case of damaged goods or vessels.

That the act of the legislature of 1869, and all other acts passed giving compulsory and exclusive powers to masters and wardens of this port to inspect vessels and make surveys, to the exclusion of this defendant or any one else when invoked for said purposes, are unconstitutional and void, and repugnant to the constitution of the United States and the constitution of Louisiana.

That the act of 1869 is contrary to and in violation of the constitution of Louisiana and the Constitution of the United States.

This defendant has suffered damages largely, in the sum of two thousand dollars, by reason of the illegal and oppressive proceedings of plaintiffs in this suit, and will continue to suffer damages to the

15 extent of two hundred dollars per month by reason of said proceedings; he is deprived by said proceedings of his means of subsistence, being an aged man, with a large family dependent on him for support.

Wherefore this defendant prays that plaintiffs' demand be rejected; that the injunction obtained and prayed for be dissolved at plaintiffs' costs.

And now this defendant, assuming the character of plaintiff in reconvention, prays that plaintiffs, now defendants in reconvention, be cited herein, and that for the reasons assigned they be condemned, in solido, to pay unto your appearer herein the sum aforesaid of two thousand dollars for the damages sustained, and the further sum of two hundred dollars per month, with interest, until such time this plaintiff

in reconvention shall be released from the injunction herein against him in the aforesaid suit, and for general and equitable relief and costs of suit.

(Signed) E. D. CRAIG,
Atty. for R. W. Foster.

16 *Order.*

Let this reconventional demand be filed, and citation issue as prayed for.

(Signed) JACOB HAWKINS, *Judge.*

Service accepted on reconventional demand of R. W. Foster.
New Orleans, May 1st, 1873.

(Signed) HENRY C. DIBBLE,
Atty. for Plffs.

Answer to reconventional demand.—Filed May 1st, 1873.

MASTER AND WARDENS OF THE PORT OF NEW Orleans
vs.
ROBT. W. FOSTER. } No. 2885.

Plaintiffs, now made defendants to the reconventional demand of R. W. Foster, defendant of the original action, now into court come and deny all and singular the allegations in the said Foster's reconventional demand contained.

Wherefore appearers pray that the reconventional demand of
17 R. W. Foster be dismissed with costs, and for general relief, &c.

(Signed) HENRY C. DIBBLE,
Atty. for Plffs.

Continuance.—Minutes May 13th, 1873.

MASTER AND WARDENS OF PORT OF NEW ORleans,
vs.
R. W. FOSTER. } No. 2885.

This case, fixed for trial to-day, was by consent ordered to be continued to be called.

Motion for contempt.—Filed May 24th, 1873.

MASTER AND WARDENS OF PORT OF NEW ORleans,
vs.
R. W. FOSTER. } No. 2885.

On motion of Henry C. Dibble, attorney for plaintiffs, and on suggesting to the court that R. W. Foster, defendant, has violated
18 the injunction issued herein and served upon him by making a survey of the steamship Louisiana, and by making a survey of damaged goods coming into this port on board of said steamer, in direct violation of said injunction:

It is ordered that R. W. Foster, defendant, show cause on Tuesday, the 27th of May 1873, at 11 o'clock a. m., why he should not be punished for contempt by fine and imprisonment.

Sheriff's return on motion for contempt.—Filed May 28th, 1873.

Received May 24, 1873, and after search and enquiry I was unable to find the within defendant, R. W. Foster.
Ret'd same day.
(Signed) C. DONNELL,
Deputy Sheriff.

Amended answer and reconventional demand.—Filed May 27th, 1873.

MASTER & WARDENS OF PORT OF NEW ORleans, *vs.* R. W. FOSTER. } No. 2885.

19 To the honorable the judge of the superior district court for the parish of Orleans:

The amended answer and demand in reconvention of defendant, R. W. Foster, in the above case, who begs leave to amend his pleadings heretofore filed in the above cause as follows:

This defendant saith that, since filing his answer and reconventional demand, he has learned that one of the said plaintiffs, to wit, Sewell, is a British subject and not a citizen of the United States, and that by reason thereof hold an office under the State of Louisiana, and has therefore no standing in court in the above cause.

Wherefore defendant prays, on this ground, that said plaintiff's injunction be dissolved and his suit dismissed with costs; prays for the damages set forth in his original reconventional demand against said plaintiff in solido with the coplaintiffs in above suit, and for all general and equitable relief.
(Signed) E. D. CRAIG.

20 *Order.*

Let the within amended answer and amended reconventional demand be filed.
New Orleans, May 27th, 1873.
(Signed) JACOB HAWKINS, *Judge.*

Continuance.—Minutes, May 27, 1873.

MASTER AND WARDENS OF PORT OF NEW ORleans, *vs.* R. W. FOSTER. } No. 2885.

This case, fixed for this day for trial, was by consent of counsel ordered to be continued to be called with preference.

It is further ordered that the rule for contempt assigned for to-day for trial be also continued and tried with the merits of the case.

Motion fixing rule for contempt.—Filed June 2d, 1873.

21 MASTER AND WARDENS OF PORT OF New Orleans
vs.
R. W. FOSTER. } No. 2885.

On motion of H. C. Dibble, of counsel for plaintiff, it is ordered that th rule for contempt taken against defendant herein be set down for trial on Wednesday, June 4th, 1873, at 11 o'clock a. m.

Notice of trial.—Issued June 2nd, 1873.

State of Louisiana, superior district court for the parish of Orleans.

MASTER & WARDENS OF PORT OF NEW ORleans
vs.
R. W. FOSTER. } No. 2885.

NEW ORLEANS, *June 2d*, 1873.

To R. W. FOSTER:

SIR: Please to take notice that the rule for contempt in the
22 above-entitled case is fixed for trial on 4th day of June, 1873, at 11 o'clock a. m.

(Signed) GEO. W. FLYNN,
Deputy Clerk.

Sheriff's return on notice of trial.—Filed June 6th, 1873.

Received June 3d, 1873. After due and diligent search and inquiry I was unable to find the said R. W. Foster, defendant herein. I have used all possible means in my power to find the said defendant in the different places where I have found him (R. W. Foster) before, and other places "told me" where I might find him, the said defendant could not be found in such a short time I had to serve the notice in.

I am credibly informed by parties that the said R. W. Foster has not been seen for one week or more.

Ret. June 4th, 1873.

(Signed) FRANK PFISTER,
D'y Shff.

23 *Continuance.—Minutes June 4th, 1873.*

MASTER & WARDENS OF PORT OF NEW ORleans
vs.
R. W. FOSTER. } No. 2885.

The rule herein for contempt assigned for this day for trial was ordered to be continued till Tuesday next, the 10th inst., at 11 o'clock a. m.

Motion for contempt.—Filed June 4th, 1873.

MASTER & WARDENS OF PORT OF NEW ORleans
vs.
R. W. FOSTER. } No. 2885.

On motion of Henry C. Dibble, counsel for plaintiffs, and on suggest-

ing to the court that R. W. Foster, defendant, has repeatedly violated the injunction herein issued since it was served upon him, and especially by making a survey on the steamship St. Louis on or about the 3d of June, and by surveying goods from S. ship Legislator, also on or
24 about June 3d, and by making a survey on the steamship General Meade on or about May 13th, and by divers other acts in violation of said writ:

It is ordered that said R. W. Foster show cause on Thursday, the 5th of June, why he should not be punished for contempt of court by fine and imprisonment.

Sheriff's return on motion for contempt.—Filed June 6th, 1873.

Received June 4th, 1873, at 1 p. m., and on the same day, month, and year, at 10 o'clock p. m., served copy of the within rule personally on R. W. Foster, defendant herein.

Ret. same day.

(Signed) JNO. P. EXNICIOS,
Dept. Sheriff.

Continuance.—Minutes, June 5th, 1873.

MASTER & WARDENS OF PORT OF NEW ORleans *vs.* R. W. FOSTER. } No. 2885.

25 The rule for contempt taken against defendant continued to this day for trial was ordered to be continued till Tuesday next, the 10th inst., at 11 o'clock a. m.

Testimony and note of evidence.—Filed June 10th, 1873.

MASTER AND WARDENS OF PORT OF NEW ORleans *vs.* R. W. FOSTER. } No. 2885.

R. W. FOSTER, sworn for plaintiff, says:

I reside in Carrollton. I am a retired mariner. I am now engaged as an expert to discriminate on failing vessels, waters, &c.; to examine goods that arrive on sea-going vessels. After examining such goods as an expert I make a report in writing to the consignees of the ships, the underwriters. I do not examine the hatches; I do not examine cargoes in the holds; I do not act as a port-warden. I style my business as an expert. When the injunction was taken out I dropped the title of
26 marine expert. I used to style myself then marine surveyor. When I am called to inform by what means the goods of vessels are damaged, I usually tell by what means they are damaged, salt-water, chemicals, & etc. My report is passed in, & I do not know what use is made of it.

The consignees of the ships and the vessels pay me for my work.

I merely ascertain by what means the goods are damaged; by chemicals or salt-water.

The duty of a surveyor is to give an opinion on goods.

That is precisely what an expert does.

Cross-examined:

Since the injunction was served on me I have not examined goods.

The service of this injunction has damaged me about $100.00 per month. This matter was contested here before in the supreme court and decided in my favor, in suit No. 33068. I was plaintiff.

Deft. offers the decree of the supreme court in said case now filed.

Prior to the service of the injunction I was engaged in this business about a year and a half. I have resided here about 6 or 7 years.

27 I have no contract at all. The consigness and underwriters call on me to do this work. I never interfered with the port-wardens since the service of this injunction.

Re-examined:

Prior to the service of this injunction on me I did survey goods in the hatches; since then I have not. In making a survey as a marine surveyor, I did pretty much the same as a port-warden would do.

R. W. BOHEN, sworn for plff., says:

I know Mr. Foster. I do not know that he has made a survey of the hatches of any sea-going vessels. I do not know that he has made a survey of any goods on board of any sea-going vessels. I do know, however, that he has made a survey of goods taken from a sea-going .

I saw surveying goods taken from the steamship Louisiana. I saw him the other day making a survey of goods. I went on board several steamers; tendered my services, which was refused; they told me that they had a *steamer* employed. I went on board the steamer Yazoo,

28 talked with the captain; was subsequently informed that my services was not required; that they had a' old man, but did not state who he was.

Cross-examined:

I have been here for over 30 years. I have never acted as inspector before, but have been storing vessels and stevedoring.

It is admitted that Mr. Foster is a man of irreparable character, well versed in the business.

It is admitted that Mr. Foster has not made a survey of any of the hatches of sea-going vessels arriving, and that he has not inspected any goods.

Decree of supreme court, offered in evidence by defendant.—Filed June 10th, 1873.

MASTER AND WARDENS OF PORT OF NEW ORLEANS
vs
R. W. FOSTER. } No. 2885.

Supreme court of the State of Louisiana.

29 CLERK'S OFFICE,
New Orleans, May 24th, 1871.

MASTER AND WARDENS OF N. ORLEANS
vs.
ROBERT W. FOSTER ET ALS. } No. 2368.

Appeal from the sixth district court, parish of Orleans.

Mr. Chief-Justice Ludeling delivered the opinion of the court in the words and figures following, to wit:

The plaintiffs allege that they are the master and wardens of the port

of New Orleans, and that as such they have "the exclusive right to discharge the duties and perform the acts prescribed by law for them officially to perform, and that, as such officers, they have the legal and exclusive right to the fees and emoluments prescribed by law for the performance of such official acts and duties."

And they "complain that Robert W. Foster, Arthur C. Waugh, George A. Fosdick, John W. Witherspoon, William F. Halsey, William Creery, Theodore Nickerson, Charles W. Fox, R. H. Harris, and B. Bid-
30 well, in September, 1868, illegally, wantonly, and maliciously conspired and confederated together to injure and disturb petitioners in the rightful enjoyment and legal discharge of the duties of their said offices, and to divest, oust, and deprive them of the legal fees and emoluments which belong and appertain to them as such officers."

That, "in furtherance of their said illegal conspiracy," they "procured, instigated, and encouraged, and have so continued, ever since said date, and still continue to instigate, assist, and encourage the said Robert W. Foster to usurp and assume the powers, duties, and authority legally and exclusively belonging and appertaining to petitioners by virtue of their said offices, as aforesaid; and that said Foster so instigated, assisted, and encouraged, as aforesaid, usurped and assumed, and still continues to usurp and assume, the powers, authority, and duties belonging to petitioners, etc.; and they aver, further, that said Foster threatens to continue, and they fear he will continue his said illegal acts.

31 They therefore pray for an injunction against all the defendants, to restrain them from in any manner usurping, assuming, or exercising any of the functions or doing any of the acts appertaining to said officers of petitioners, etc., and for fifty thousand dollars damages.

The evidence shows that the defendants have entered into a contract whereby the said Foster was employed to examine and survey damaged goods in cases where they were interested, and that the said Foster does not pretend to act under any commission or by virtue of any public office, but simply as the employé of the merchants and underwriters who may engage his services, and that he has not molested or interfered in any manner with plaintiffs.

We know of no law which prevents the defendants from entering into such a contract as the above, and we think the plaintiffs have wholly failed to show any right of action.

The grave constitutional question discussed in the briefs and
32 arguments of counsel need not be passed upon in order to decide this case, and courts of justice will avoid deciding upon the constitutionality of laws unless the decision be indispensably necessary for the determination of the cause.

It is therefore ordered that the judgment of the district court be avoided, and that there be judgment in favor of defendants, dissolving the injunction and rejecting plaintiffs' demand, with costs of both courts.

A true copy.

[SEAL.] (Signed) M. P. JULIAN,
Dep'y Clerk.

Judgment rendered June 10th, 1873.

MASTERS & WARDENS OF THE PORT OF NEW Orleans
vs.
R. W. FOSTER. } No. 2885.

This case, fixed for this day for trial, came on. Present, Henry C. Dibble, for plaintiff; E. D. Craig, for defendant.

After hearing pleadings, evidence, and counsel, the court, con-
33 sidering the law & the evidence to be in favor of plaintiff—

Ordered, adjudged, & decreed that there be judgment in favor of said plaintiff', the Masters and Wardens of the port of New Orleans, and against the defendant, R. W. Foster, perpetuating the injunction issued herein with costs.

Judgment signed June 14th, 1873.

(Signed) JACOB HAWKINS, *Judge.*

Motion for appeal.—Filed June 19th, 1873.

MASTER AND WARDENS OF PORT OF NEW Orleans
vs.
R. W. FOSTER. } No. 2885.

On motion of E. D. Craig, atty. for deft., and on suggesting to the court that there is error in the judgment of the court to the prejudice of defendants, said judgment rendered June 10th, 1873, and made final on June 14, 1873; that the same is contrary to the laws and the evidence:

It is ordered by the court that an appeal be allowed defendant
34 herein on exec'uing a bond with surety, as the law directs, in the sum of two hundred dollars, returnable to the supreme court of Louisiana on the 1st Monday in November next.

Appeal-bond.—Filed June 19th, 1873.

MASTER AND WARDENS OF THE PORT OF NEW Orleans
vs.
R. W. FOSTER. } No. 2885.

Know all men by these presents that we, Robert W. Foster as principal, and S. C. Manning as sureties, are held and firmly bound unto John Burke, clerk of the superior district court of the parish of Orleans, his successors, executors, administrators, and assigns, in the sum of two hundred dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seal', and dated in the city of New Orleans on this 19th day of June, in the year of our Lord one thousand eight hundred and seventy-three.

Whereas the above-bounded Robt. W. Foster has this day filed
35 a motion of appeal from a final judgment rendered against him in the suit of the Masters & Wardens of the port of New Orleans vs. Robt. W. Foster, No. 2885, in the superior district court for the parish of Orleans, on the 10th day of June, 1873, and signed on the 14th day of June, 1873:

Now, the condition of the above obligation is such that the above-bound' Robt. W. Foster shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him, or that the same shall be satisfied by the proceeds of the sale of his estate, real or personal, if he be cast in the appeal; otherwise, that the said surety, S. C. Manning, shall be liable in his place.

(Signed) ROBT. W. FOSTER. [L. S.]
(") S. C. MANNING. [L. S.]

Rule for contempt.—Filed June 24th, 1873.

MASTER AND WARDENS OF PORT OF NEW Orleans *vs.* R. W. FOSTER. } No. 2885.

36 On motion of Henry C. Dibble, counsel for plaintiff, and on showing to the court that R. W. Foster, defendant herein, has violated the injunction herein by making a survey of damaged goods on board, or which arrived on board, of the steamship Mississippi and Yazoo on or about the 16th, 17th, or 18th days of June, A. D. 1873:

It is ordered that said Foster show cause on Friday, June 27th, 1873, at 11 o'clock a. m., why he should not be punished for contempt by fine or imprisonment, or both.

(Signed) HENRY C. DIBBLE,
For Plaintiff.

Sheriffs return on rule for contempt.—Filed June 25th, 1873.

Received June 24th, 1873, and on the same day, month, and year, served a copy of the within rule for contempt on R. W. Foster, defendant herein, in person.

Ret. same day.

(Signed) FRANK PFISTER,
D'y Shff.

37 *Rule continued.—Minutes June 27*, 1873.

MASTER AND WARDENS OF PORT OF NEW Orleans. *vs.* R. W. FOSTER. } No. 2885.

The matter of contempt herein against defendant, R. W. Foster, was ordered to be continued till Monday next, the 30th instant.

Rule continued.—Minutes June 30th, 1873.

MASTER & WARDENS OF PORT OF NEW ORLEANS *vs.* R. W. FOSTER. } No. 2885.

The rule for contempt taken herein by plaintiffs against the defendant, R. W. Foster, assigned for this day for trial was ordered to be continued till to-morrow, Tuesday, July 1st, 1873, at 11 a. m.

Rule discharged.—Minutes July 1st, 1873.

MASTER & WARDENS PORT OF N. O. *vs.* R. W. FOSTER. } No. 2885.

38 The rule for contempt taken by plaintiff against the defendant, Foster, assigned for to-day came on. Present, F. M. Butler, for plaintiff; E. D. Craig for defendant.

After hearing testimony of witnesses, the court, considering the law and the evidence to be in favor of defendant, Foster, ordered that said rule be discharged.

Clerk's certificate.

I, John Burke, clerk of the superior district court for the parish of Orleans, do hereby certify that the foregoing pages do contain a true, complete, and correct transcript of all proceedings had, documents filed, testimony and evidence adduced on the trial of the cause wherein the "Master and Wardens of the port of New Orleans, are plaintiffs, and Robert W. Foster is defendant," the same being numbered #2885 of the docket of the superior district court for the parish of Orleans.

39 In testimony whereof I hereunto set my hand and affix the impress of the seal of our said court, at the city of New Orleans, on this day of July, in the year of our Lord one thousand eight hundred and seventy-three, and in the ninety-seventh year of the Independence of the United States.

[SEAL.] (Signed) JOHN BURKE, *Clerk.*

Supreme court of the State of La.

Extract from the minutes.— Wednesday, December 17, 1873.

The court was duly opened. Present, their honors John T. Ludeling, chief-justice; and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associates, justices.

MASTER & WARDENS OF THE PORT OF NEW Orleans *vs.* ROBERT W. FOSTER. } 4765.

This case was ordered by the court to be continued with preference.

40 *Extract from the minutes.— Wednesday, January* 21, 1874.

The court was duly opened. Present, their honors John T. Ludeling, chief-justice; and James G. Taliaferro, Rufus K. Howell, Philip H. Morgan, associate justices; absent, William G. Wyly, associate justice.

MASTER & WARDENS OF THE PORT OF NEW Orleans *vs.* ROBERT W. FOSTER. } No. 4765.

This case was called for trial, and ordered by the court to be continued for argument to to-morrow, Thursday, the 22d instant.

Extract from the minutes.—Thursday, January 22d, 1874.

The court was duly opened. Present, their honors John T.
41 Ludeling, chief justice; and James G. Taliaferro, Rufus K. Howell, Philip H. Morgan, associate justices; absent, William G. Wyly, associate justice.

MASTER & WARDENS OF THE PORT OF NEW ORLEANS
vs.
ROBERT W. FOSTER. } No. 4765.

This case was called for resumption of trial, and, having heard argument from Henry C. Dibble, esq., of counsel for plaintiffs and appellees, the court took said case under advisement upon the briefs & papers now on file.

Opinion of the court. Filed February 2d, 1874.
(Signed) M. P. JULIAN,
Dy. Clerk.

MASTER & WARDENS OF THE CITY OF NEW ORLEANS
vs.
ROBERT W. FOSTER. } No. 4765.

Mr. Justice MORGAN:

42 Petitioners seek to enjoin the defendant from making any survey of the hatches of any sea-going vessel which may have arrived, or which may arrive, at this port; and from making any survey either on board or on shore of any damaged goods which may have arrived, or which may arrive, on any sea-going vessel; and from giving any certificates of any survey, and from doing any act which the master and wardens are authorized by law to perform.

The suit is brought under the second section of act No. 68, session 1869, p. 67, which provides that it shall be unlawful for any person other than the master and wardens of the port of New Orleans, or their legally constituted deputy, to make any survey of hatches of sea-going vessels coming into said port of New Orleans, or to make any survey of damaged goods coming on board such vessel, whether such survey be made on board or on shore, or to give certificates on orders for the sale
43 of such damaged goods at auction, or to do any other of the acts and things prescribed by law for the master and wardens to do and perform.

Defendant admits that by reason of his superior experience in marine matters he is often called upon by parties in interest to inspect damaged goods and vessels, and to report upon them, but that he has never sought or claimed to give any legal effects to his acts; that no law can compel private citizens to employ the plaintiffs when all parties in interest do not wish their services; that the act of 1869, and all other acts giving compulsory and exclusive powers to masters and wardens to inspect vessels and make surveys, to his exclusion, or to the exclusion of any one else, is unconstitutional and void and repugnant to the constitution of the State of Louisiana.

From judgment rendered against him, he has appealed.

A case precisely similar to the one at bar, and between the same

parties, was decided some time ago, and is to be found in 23rd Annual, p. 750. In that case we said:

"The evidence shows that the defendants have entered into a contract whereby the said Foster was employed to examine and survey damaged goods in cases where they were interested, and that said Foster does not pretend to act under any commission or by virtue of any public office, but simply as the employee of the merchants and underwriters who may engage his services, and that he has not molested or interfered in any manner with plaintiffs.

"We know of no law which prevents the defendants from entering into such a contract as the above, and we think the plaintiffs have wholly failed to show any right of action."

But since this decision was rendered the legislature passed the act under which the present action is brought. By it all persons except the plaintiffs are prohibited from doing the things the defendants claim they have the right to do. The question is, Has the legislature the power to say who alone shall be permitted to make any survey of hatches of sea-going vessels coming into the port of New Orleans?"

In support of the negative of this position the appellant relies upon the decision of the Supreme Court of the United States in the case of The Steamship Company vs. Port-Wardens, (6 Wallace, p. 31.)

That was a suit wherein the port-wardens sought to recover from the company five dollars.

Their claim was founded on a section of the act of 15th March, 1855, which provides that the master and wardens of the port of New Orleans should be entitled to demand and receive, in addition to other fees, the sum of five dollars, whether called on to perform any service or not, for every vessel arriving in this port. The court held that the act in question was a regulation of commerce; that it imposed a tax upon every ship entering this port; that the power to regulate commerce was given to Congress; that it was thus given with the obvious intent to place that commerce beyond interruption or embarrassment arising from conflicting or hostile State regulations, and that the act under which that suit was brought worked the very mischief against which the Constitution intended to protect commerce among the States.

The first section of the act of 6th March, 1869, p. 67, provides that it shall be the duty of the master and wardens of the port of New Orleans, within twenty-four hours after the arrival and mooring at the wharf or landing in the port of New Orleans, or any sea-going vessel arriving with cargo, to go on board such vessel and offer their official services to make survey of the hatches of such vessel, and to perform the acts and services prescribed by law for them to perform, and in case such services so offered to such sea-going vessel shall be declined or refused, the said masters and wardens shall be entitled to charge and collect from such vessel, her master and owners or consignees, the amount of three dollars for services so tendered.

Under the decision from 6th Wallace just quoted it would seem that this portion of the act of 1869 would be unconstitutional. Admitting this to be so, it does not follow that the whole act is unconstitutional, and we would only be called upon to pass upon the question when it is presented by some person who is proceeded against for a violation of its provisions; as, for instance, if suit for three dollars were to be instituted against the captain of a vessel to whom the port-wardens had tendered their services and been refused. But the present defendant cannot set up the unconstitutionality of this section, he not being

48 proceeded against under it. In the second section of the act, which provides that it shall be unlawful for any person other than the master or wardens, or their legally-constituted deputy, to make any survey of hatches of sea-going vessels coming into the port of New Orleans, or to make any survey of damaged goods coming on board such vessel, whether such survey be made on board or on shore, or to give certificates on orders for the sale of such damaged goods at auction, or to do any other of the acts and things prescribed by law for the master and warden to do and perform, unconstitutional?

We think not. The legislature may not have the power to force a vessel which comes to this port from sea to have a survey made of her hatches, but it has the right to designate by whom a survey shall be made, if one is asked for by the captain or owner of the vessel.

49 This is not a tax upon commerce; it is only saying by what officer a certain act shall be performed.

This, we think, the legislature has a right to do. It has the right, and has exercised it, to appoint harbor-masters, port-wardens, inspectors of various products, and it has never been held that the exercise of this right has been a tax upon commerce or that it is a violation of the Constitution.

The last question presented is whether the plaintiffs are authorized under the Constitution and laws of the United States, and of this State, to enjoin the defendant from making surveys of the hatches of vessels, or to make surveys of damaged goods coming on board of vessels. Defendant contends that it is, because it deprives him of a means of support. We do not think so. In the case of Shepherd vs. Pyson, 14 A., p. 7, it was said: "There can be no doubt that an injunction is a

50 proper remedy to prevent a person from doing an act which may be injurious to another, or which impairs a right claimed by that other. The occupation of a pilot for the port of New Orleans is lucrative, and is restricted by law to persons specially designated by the governor of the State. It is, therefore, evident that the exercise of the business by a person not legally appointed, may be prejudicial to each and every one who is so appointed.

"A party may always claim the aid of the laws of his country to prevent a wrong which, if inflicted, he could claim damages for. These laws would be lamentably defective if they could not prevent injuries as well as punish them." (5 N. S., 501.)

In the case under consideration, the master and wardens are appointed by the governor. The occupation which they are authorized to perform is a lucrative one, and all persons are prohibited from exer-

51 cising it except those who are appointed by the governor. We think that when the law says it shall be unlawful for any person to do a particular thing, a person who attemp's to do it may be enjoined by any person in interest.

It is therefore ordered, adjudged, and decreed that the judgment of the district court be affirmed with costs.

Extract from the minutes.—Monday, February 2d, 1874.

The court was duly opened pursuant to adjournment.

Present, their honors, John T. Ludeling, chief-justice, and James G.

Taliaferro, Rufus K. Howell, Philip H. Morgan, associate justices; absent, William G. Wyly, associate justice.

52 MASTER & WARDENS OF THE PORT OF New Orleans *vs.* ROBERT W. FOSTER. } No. 4765.

On appeal from the superior district court for the parish of Orleans, it is ordered, adjudged, and decreed that the judgment of the district court be affirmed with costs.

Application for a rehearing. Filed February 13th, 1874.
(Signed) M. P. JULIAN,
Depy. Clerk.

Supreme court.

THE MASTER & WARDENS *vs.* R. W. FOSTER, APPLT. } No. 4765.

To the hon. the chief-justice & associate justices of the supreme court of La.:

The application of deft. and appellant for a rehearing in the above entitled cause:

Appellant respectfully submits to your honors that there is
53 error in your judgment in affirming that of the superior court & perpetuating the injunction in the above cause, for the following reasons:

1st. That the matter in controversy is not within the jurisdiction of the superior court whence the appeal, for the reason that it will appear from the testimony of Foster, the defendant, that he resided at the time in Carrolton, Jefferson Parish. The question of jurisdiction was raised in the brief filed by appellant, but not noticed by your honor. The fact as to the residence was brought out by plaintiff himself in interrogating deft.

2d. We think your honors are in error in classing this case with those which may be considered inspection laws or police regulations. There is no analogy in this case to wharfage, pilot-due', harbor-masters' dues, &c. We think this idea is refuted in 6th Wallace & nowhere taught in the decisions of the S. C. of the U. S. It is true that this law (1869)
54 differs slightly from the law of 1855, but only in this, that it is the old law of '55 re-enacted, with penalties, & if the law of '55 be unconstitutional, that of '69 is more so, for the reason that it seeks to enforce an unconstitutional law with pains & penalties.

The distinction that the case in 6 Wallace relates to $3 sought to be collected does not change the phase. This law says to all the parties concerned, If you don't pay the unconstitutional amount required you shall suffer a fine, & no one else shall be allowed to perform the same duties required to be done for the payment of the said sum, and thus it becomes a burden upon commerce just as much as a tax. I am quite clear the decision in 6 Wallace, in spirit, bears me out in this conclusion. We regret exceedingly to differ with your honors, but in this case a great hardship is imposed upon deft., who, in his extreme old age, is now de-

prived of his only source of support in an occupation in which
55 for many years he has enjoyed the confidence & support of the commercial community of the city, & is now compelled to abandon a lawful calling which, under our construction of the laws, no human power should interfere, and that, too, by reason of an unconstitutional law, which cannot be shown to have been enacted in the public interest, but is a burden upon commerce & odious to all whose intents it affects except the chosen parties whom the caprice of party may place in position to reach its advantages. We think the individual rights of deft. has been stricken down by this law, and hope your honors will carefully revise your former opinion & see if a different conclusion may not be attained & that a rehearing be granted.

With great respect submitted.

E. D. CRAIG,
Atty. for Deft. & Applt.

Extract from the minutes.—Monday, March 23, 1874.

56 The court was duly opened, pursuant to adjournment.

Present, their honors John T. Ludeling, chief-justice, and James G. Taliaferro, Rufus K. Howell, William G. Wyly, Philip H. Morgan, associate justices.

MASTER & WARDENS OF THE PORT OF NEW ORLEANS, *vs.* ROBERT W. FOSTER. } 4765.

It is ordered that the rehearing applied for in this case be refused.

Certificate.

I, M. P. Julian, d'y clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing 56 pages contain a full, true, and complete copy of the transcript of the proceedings had in the superior district court for the parish of Orleans in a certain suit wherein Master & Wardens
57 of the port of New Orleans were plaintiffs, and Robert W. Foster was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said defendant, which said transcript of appeal is now on the files of this honorable court under No. 4765.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court, at the city of New Orleans, this 17th day of August, anno Domini, 1874, and in the ninety-ninth year of the Independence of the United States of America.

[SEAL.] M. P. JULIAN,
D'y Clerk.

John M. Howell, clerk, being absent.

58 To the honorable chief-justice of the State of Louisiana:

The petition of Robert W. Foster, residing in New Orleans, respectfully represents that in the case of the Master & Wardens vs. your petitioner, No. in this court, there was drawn in question the validity of a statute of Louisiana and an authority exercised under said State on the ground of their being repugnant to the United States Constitution, and

the decision of said supreme court of Louisiana was in favor of such their validity; that he desires a writ of error and to prosecute the same from the said judgment of the supreme court of Louisiana to the Supreme Court of the United States, and he is ready to give such bond as may be ordered by this honorable court.

Petitioner alleges that the said judgment rendered by this honorable court against him is final; that, as it was rendered by the highest court of the State on the constitutional question hereinbefore stated, he is entitled to his writ of error as herein prayed for.

59 Wherefore your petitioner respectfully prays that he be granted a writ of error returnable to the Supreme Court of the United States on the second Monday of October next, on his giving bond and security as required by law, and that a citation issue to the defendants in error.

EMMET D. CRAIG,
LEORY, MONROE & HENS,
Attorneys for Petitioner.

60 Let the writ issue as herein prayed for, returnable to the Supreme Court of the United States on the second Monday of October next, on the plaintiff in error giving bond, with good and sufficient security, in the sum of five hundred dollars, and let the defendants in error be cited to answer said writ of error.

New Orleans, July, 1874.

JNO. T. LUDELING,
Chief-Justice Supreme Court of Louisiana.

(Indorsed:) No. 4765. Supreme court of Louisiana. Master & Wardens of the port of New Orleans vs. Robert W. Foster. Filed July 8th, 1874. M. P. Julian, d'y clk. sup. court.

61 Know all men by these presents that we, Robert W. Foster as principal, and Thos. A. Adams & J. Tuyes as sureties, are held and firmly bound unto Master & Wardens of the port of New Orleans, and to the clerk of the su. court Louisiana & the clerk of the Sup. Court of U. S. in the full and just sum of five hundred dollars, to be paid to the said Master & Wardens of the port of New Orleans, or their said clerk of the S. C. of La. & of the United States, or their attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this ninth day of July, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at a supreme court of the State of Louisiana, holding sessions in the city of New Orleans, State of Louisiana, in a suit depending in said supreme court, wherein Robert W. Foster is deft., and Master & Wardens of the port of New Orleans plaintiffs, judgment was rendered against the said Robert W. Foster, defendant, and the said Robert W. Foster having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Master & Wardens of the port of New Orleans citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such, that if the said Robt. W. Foster shall prosecute his writ to effect, and answer all dama-

ges and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ROBT. W. FOSTER. [L. S.]
THOS. A. ADAMS. [L. S.]
J. TUYES. [L. S.]

Sealed and delivered in the presence of—
JAMES I. DAY

Approved August 3d, 1874.

JNO. T. LUDELING,
Chief Justice S. Court of Louisiana.

(Indorsed:) No. 4765. Supreme court of La. vs. . Bond for writ of error. Filed July 7th, 1874. M. P. Julian, d'y clerk.

62 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the the judgment of a plea which is in the said supreme court before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in said suit, between the Master and Wardens of the port of New Orleans, plaintiffs, and Robert W. Foster, defendant, No. 4765 of the docket of said supreme court, wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said Robert W. Foster, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this 3d day of July, in the year of our Lord one thousand eight hundred and seventy-four.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

Allowed.

JNO. T. LUDELING,
Chief-Justice S. Court of La.

(Indorsed:) United States circuit court. No. . Robert W. Foster, plaintiff in error, versus Master & Wardens of the port of New Orleans, defendants in error. Writ of error. Copy of a writ of error lodged in the clerk's office of the supreme court of the State of Louisiana in pur-

suance of the statute in such cases made and provided this day of , one thousand eight hundred and seventy-four. ,
attorney of plaintiff in error. 4765. Filed July 7th, 1874. M. P. Julian, d'y c'k.

63 THE UNITED STATES OF AMERICA:

The President of the United States to Master & Wardens of the port of New Orleans, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein Robert W. Foster is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 9th day of July, in the year of our Lord one thousand eight hundred and seventy-four*th*.

JNO. T. LUDELING,
Chief-Justice Supreme Court of the State of Louisiana.

(Indorsed:) 2885. Superior ct. Supreme court of the State of La. No. 4765. vs. . Citation. For return.

Sheriff's return.

Recd. Aug't 12, '74, and on the 22nd day of same month & year I served a copy of the within citation of error on Master & Wardens of the port of New Orleans by leaving same at their office, on Exchange Alley, between Custom-House & Bienville streets, in hands of P. H. Desma, portwarden, in person.

Ret'd same day.

Sh'ff fees, $1.00.

JOHN GAFFREY, *D'y Sh'ff.*

The dep'y sheriff, being duly sworn, deposes that all the allegations of his return are true.

JOHN GAFFREY.

Sworn to & subscribed before me this 22nd day of Aug., A. D. 1874.
M. P. JULIAN,
D'y Clk. Sup. Court.

(Indorsement on cover:) No. 116. Robert W. Foster, plaintiff in error, vs. The Master & Wardens of the port of New Orleans. Louisiana sup. ct. Filed 12th October, 1874.

Supreme Court of the U.S.

No.

MASTER & WARDENS

FOR THE PORT OF NEW ORLEANS,

versus

ROBERT W. FOSTER.

BRIEF FOR ROBERT W. FOSTER, PLAINTIFF IN ERROR.

Respectfully submitted,
LEOVY, MONROE & HART,
EMMET D. CRAIG,
R. H. MARR,
Of Counsel for Plaintiff in Error.

Supreme Court of the U.S.

No.

MASTER & WARDENS

FOR THE PORT OF NEW ORLEANS,

versus

ROBERT W. FOSTER.

BRIEF FOR ROBERT W. FOSTER, PLAINTIFF IN ERROR.

In this case the Master and Wardens of New Orleans alleged that under an act of the Legislature of Louisiana, approved March 6th, 1869, they have the exclusive right to survey hatches of sea going vessels coming into New Orleans, to make surveys of damaged goods, to give certificates or orders for the sale of damaged goods at auction, etc.; that R. W. Foster was then engaged in making surveys of hatches and of damaged goods, and in performing duties which exclusively devolved on them and for which they were entitled to compensation. They prayed that Foster be restrained from pursuing the vocation of which they complained. (Rec. p. 2, 3 and 4.)

Defendant contended that for many years he had been employed by Underwriters, Consignees and Shipping Agents to examine damaged goods, and report the extent and character of the damage to merchandise, as a basis for settlements in contested matters; and this right to pursue this business had not been questioned until the statutes creating the offices of Master and Wardens had been amended with a view to give the business exclusively to the Master and Wardens. He also alleged that the act of 1869 and other statutes amendatory of the act creating the Board of Port Wardens were null and void, because they were passed in contravention of certain provisions of the United States Constitution.

The writ of injunction was granted as prayed for, and Foster appealed to the Supreme Court of the State. That Court affirmed the decision of the lower court and declared that the statute of 1869 did not violate any part of the United States Constitution. (Rec. p. 41.)

The act of 1869 upon which this suit is based reads as follows:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That it shall be the duty of the master and wardens of the port of New Orleans, or any one of them or their legally constituted deputy, within twenty-four hours after the arrival and mooring at the wharf or landing in the port of New Orleans of any sea-going vessel arriving with cargo, to go on board such vessel and offer their official services to make survey of the hatches of such vessel and to perform the

acts and services prescribed by law for them to perform And for neglect or refusal on the part of said master or wardens, or their deputy, to make an offer of such services as hereinbefore prescribed, such master and wardens shall be liable *in solido* to a penalty of twenty-five dollars, to be recovered at the suit of the master and owners of such vessel. And in case such services so offered to such sea-going vessel shall be declined or refused, the said master and wardens shall be entitled to charge and collect from such vessel, her master and owners or consignees, the amount of three dollars for services so tendered.

SEC. 2. *Be it further enacted, etc.*, That it shall be unlawful for any person other than the said master and wardens, or their legally constituted deputy, to make any survey of hatches of sea-going vessels coming into the said port of New Orleans, or to make any survey of damaged goods coming on board such vessel, whether such survey be made on board or on shore, or to give certificates on orders for the sale of such damaged goods at auction, or to do any other of the acts and things prescribed by law for the said master and wardens to do and perform; and the person doing said illegal and forbidden acts, his instigators and encouragers shall be liable and bound to pay *in solido* to the said master and wardens one hundred dollars damages, with costs, for each of said illegal and forbidden acts so done; and should such illegal and forbidden act be done at the instance, procurement and instigation of the master, owner or owners, or agent of such vessel, then the said vessel, her master and owners shall be bound to pay the said master and wardens the said amount of one hundred dollars damages, which amount, in each and all of the cases above named may be recovered by the said master and wardens, by civil suit, before any court having jurisdiction of the parties and amount, and in case of several violations of the provisions of this act by the same party or parties, it shall not be indispen-

sable to institute a separate suit for each violation, but the said master and wardens may have and maintain their suit, before any court having jurisdiction of the parties and amount for the aggregate amount of damages, for which the defendant or defendants may be liable under the provisions of this act.

SEC. 3. *Be il further enacted, etc.,* That all laws and parts of laws in conflict herewith are hereby repealed; and that this act take effect from and after its passage.

The statute creating the offices of Master and Wardens was originally passed in 1805 by the Territory of Orleans, it was amended in 1806, and *remained unchanged until* 1865. In 1851, an attempt was made by the Port Wardens to have the Supreme Court of Louisiana give to the act a prohibiting character ; but the Court, through C. J. Eustis, declared "they have the *sole* right to order and direct the sale of damaged goods by public auction, in the case provided in the section; *that is, when called upon* by the person commanding the ship," etc. Master, etc. vs. Hawes, 6th La. Ann. R., p. 389. And the Court added, *"this construction gives us a wise law;* one strictly constitutional and necessary in a sea port for the protection and guide of masters and of ships, who are called upon in cases of accident or disaster to exercise great discretionary power as to the property confided to their care." "The construction that would isolate this provision from its controlling clause would give a power to this class of officers over the property accidentally and from misfortune within their reach, sent to our shores under the safeguard of the Constitution, which we know from the cautious and wise legislation of the late Council of the

Territory, never would have been conferred knowingly by this body or have received the sanction of the general government. *Such a construction we cannot for a moment admit.*"

What the judiciary could not for a moment admit, the Legislature attempted in 1865 permanently to establish.

By Act No. 29, approved March 16th, 1865, it was declared that "the Master and Wardens of the port of New Orleans shall, *exclusive of all other persons*, be the surveyors of all damaged goods," etc. This language was more emphatic than that used in the act of 1805; but what was the fate of this statute?

The case of Master and Wardens vs. R. W. Foster, et. als., 23 La. Annual Reports, p. 750, tells the story. Again the commerce of the city was protected by the strong arm of the judiciary. In that case the court say, "the evidence shows that the defendants have entered into a contract whereby the said Foster was employed to examine and survey damaged goods in cases where they were interested, and that the said Foster does not pretend to act under any commission or by virtue of any public office, but simply as the employé of the merchants and underwriters who may engage his services, and that he has not molested or interfered in any manner with plaintiffs. *We know of no law which prevents the defendants from entering into such a contract as the above*, and we think the plaintiffs have *wholly failed* to show any right of action;" and the court added, that it was unnecessary to pass on

"the grave constitutional question," discussed in the arguments.

But, two decisions of the Supreme Court on two statutes of this State did not discourage the Port Wardens. The *exclusive* right to survey damaged goods in such a port as New Orleans was a prize too valuable to be lost.

A facile Legislature was induced to enact the statute of 1868, (approved August 11,) and that of 1869, (approved March 6th.) These two acts were passed to defeat three decisions. To two we have just adverted. The other was the decision of the Supreme Court of the United States reported in Sixth Wallace, (p. 36) in which it was declared that the act of 1855 was null and void, because contravening two provisions of the United States Constitution. (The Act of 1855 was that of 1805, published in the Revised Statutes.)

The defendants are now relying on the act of 1869, which we have copied in this brief. We contend that the act is null and void for the reasons stated in the case of Master and Wardens vs. Southern Steam Ship Company (6 Wall., 36); and for the reason that the statute of 1869 is in conflict with the fourteenth amendment of the United States Constitution.

We therefore rely on the following points :

1st. The said act of 1869 is null and void because it is in violation of article 1, section 10, paragraph 3, in that it imposes, without the consent of Congress, a duty of tonnage.

2d. It is null and void because it conflicts with

article 1, section 8, paragraph 3, in that it regulates commerce—which power is *exclusively* vested in Congress.

3d. It is null and void because it abridges "the privileges or immunities of citizens of the United States; and because it deprives persons of property, without due process of law: all contrary to section first of the fourteenth amendment of the United States Constitution."

4th. It is null and void, because it violates other provisions of the U. S. Constitution and Amendments.

We believe it to be quite unnecessary to argue the first two points on which we rely. The act of 1869 is the same in substance as that of 1855, which this Honorable Court declared to be unconstitutional. The phraseology, it is true, is changed, but the tonnage duty, and the regulation of commerce, remain on it as indelibly stamped, as on the statute of 1855. Nor can they be gotten rid of, for the *thing* created is what the United States Constitution says the Port Wardens shall not have, the right to collect a tonnage duty without an equivalent in services, and the monopoly of a business, which commerce requires shall be open to competition.

This Honorable Court in the case referred to, (6 Wallace, 36,) said:

"That the act of the Legislature of Louisiana is a regulation of commerce can hardly be doubted. It imposes a tax upon every ship entering the port of New Orleans, to be collected upon every entry. In the case

of a steamer plying between that port and ports in the adjoining States of Alabama or Texas, it becomes a serious burden, and works the very mischief against which the Constitution intended to protect commerce among the States."

"It may be true that the existence of such a body of men is beneficial to commerce, but the same is true of the government of the State, of the city government, of the courts, of the whole body of public functionaries. If the constitutionality of the charge, for the benefit of the Master and Wardens, can be maintained upon the ground that it secures compensation for services, it is difficult to perceive upon what grounds the constitutionality of any State law imposing taxes for the benefit of the State Government upon vessels landing in its ports, can be questioned."

"We think it quite clear, therefore, that the regulation of commerce made by the act before us comes within none of the limitations or exceptions to the general rule of the Constitution, that the regulations of commerce among the States is in Congress."

"We think *also* that the tax imposed by the act of Louisiana is, in the fair sense of the word, a duty on tonnage. In the most obvious and general sense it is true, those words describe a duty proportioned to the tonnage of the vessel; a certain rate on each ton. But it seems plain that taken in this restricted sense, the constitutional provision would not fully accomplish its intent. The general prohibition upon the States

against levying duties on imports or exports would have been ineffectual if it had not been extended to duties on ships which serve as the vehicles of conveyance. This extension was doubtless by the prohibition of any duty of tonnage. It was not only a *pro rata* tax which was prohibited, by any duty on the ship, whether a fixed sum upon its whole tonnage, or a sum to be ascertained by comparing the amount of tonnage with the rate of duty."

We think further comment on these two points unnecessary, and will therefore pass to our third point.

The fourteenth amendment (section 1) declares: "* * * No State shall make or enforce any law which shall *abridge the privileges or immunities* of citizens of the United States; nor shall any State deprive any person of life, liberty *or property* without due process of law."

We are aware of the novelty and importance of the main issue involved in this case. It has twice been presented to this Honorable Court, and decided by divided opinions. And in the first of the two the Court said —

"We do not conceal from ourselves the great responsibility which this duty devolves upon us. No questions so far-reaching and pervading in their consequences, so profoundly interesting to the people of this country, and so important in their bearing upon the relations of the United States, and of the several States to each other and to the citizens of the States of the United States, have been before this court during the official life of any of its present members."

The plaintiff in error pursues a business which, in commercial cities, has grown to the magnitude of a profession—he is commonly called a marine expert. His character is of the highest, as is shown by the admission on p. 28 of the record. It is there admitted that "Mr. Foster is a man of irreproachable character, well versed in the business." For a description of the character of his business, we beg to refer the Court to the evidence on page 25 of the record.

The plaintiff in error has grown old in the practice of the business of which it is now attempted to deprive him. His right to labor for parties who choose to employ him is a valuable privilege—it is his means, his only means of making bread for himself and for his family. It is the only means of a vast majority of the laboring classes of the country. If a man can be deprived by a State Legislature of the right to examine goods for the owner or other party, and say how they were damaged, and to what extent, then he can be deprived of hiring his services for other work, and it would be difficult, if not impossible, to define the limits of this power.

The words "privileges or immunities" found in the fourteenth amendment are not used for the first time in the Constitution. They are to be found in section two of the fourth article, where it is said:

"The citizens of each State shall be entitled to all the *privileges and immunities* of citizens of the several States," and the same words used in the same sense are incorporated in the articles of the old confederation, (see fourth article.)

In Corfild vs. Coryell, decided by Mr. Justice Wash-

ington, in the Circuit Court for the District of Pennsylvania, and cited by Mr. Justice Miller, it was said, "the inquiry is what are the privileges and immunities of citizens of the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are fundamental; which belongs of right to the citizens of all free governments, and which have at all times been enjoyed by citizens of the several States which compose this Union, from the time of their becoming free, independent and sovereign. What the fundamental principles are, it would be more tedious than difficult to enumerate. They may all, however, be comprehended under the following general heads: protection by the government, with the right to acquire and possess property of every kind and to pursue and obtain happiness and safety, subject, nevertheless, to such restraints as the government may prescribe for the general good of the whole."

Mr. Justice Field said in the Slaughter House cases, (16 Wall., p. 97), "the privileges and immunities designated, are those which of right belong to the citizens of all free governments. Clearly among these must be placed the right to pursue a lawful employment in a lawful manner, without restraint than such as equally affects all persons."

And, in the same cases, Mr. Justice Bradley added, "they may, however, be all comprehended under the following general heads: protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject, nevertheless,

to such restraints as the government may justly prescribe for the general good of the whole; the right of a citizen of one State, to pass through, or reside in, any other State for purpose of *trade, agriculture, professional pursuits, or otherwise;* to claim the benefit of the writ of *habeas corpus;* to institute and maintain actions of any kind in the courts of the State; to take, hold, and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State, may be mentioned as some of the particular privileges and immunities of citizens which are clearly embraced by the general description of privileges deemed to be fundamental."

Not only does the fourteenth amendment protect the citizen in his right to labor as a privilege and an immunity, but it protects him in this right as *property*. His privilege to labor is property. In the Slaughter House cases (already referred to) Mr. Justice Swayne said: "Property value, and the right of *property includes the power* to dispose of it according to the will of the owner. *Labor is property*, and as such merits protection. The right to make it available is *next in importance to the rights of life and liberty.* It lies to a large extent at the foundation of most other forms of property, and of all solid individual and national prosperty."

This subject has been so elaborately discussed, and so carefully considered in the great cases of the Slaughter House, (16 Wallace, 36) and Bartmeyer vs. Iowa, (18 Wallace) that it would be supererogatory to

attempt now to throw additional light upon it. But in both those cases the application of the law was made difficult by reason of the necessity of conceding to the States the power to regulate matters of police and health. Here no such considerations intervene. No great public interest requires that port wardens in a great city, bearing commissions shall be the *only* parties to tell insurance companies, owners of vessels, owners of goods, consignees, how goods were damaged, how much they were damaged, and whether or not it is best they should be sold at public auction. The interest of the public is on the other side—merchants wish to select their agents. They do not desire to have inexperienced men thrust upon them. In the suit of the Port Wardens vs. Foster, in 23 La., Ann. Reports, 750, the merchants of New Orleans made themselves a party to the suit in favor of Foster.

The Louisiana Act of 1869, makes it unlawful for *any* person, the owner of the merchandise, the company that has insured, the owner of the vessel, their agents, clerks or employes, for a consideration or without a consideration, to look at damaged goods on a vessel and report whether damaged or not; how much damaged; in what manner damaged. And if any one attempts to do this innocent work, he is to be tried and punished as a criminal. We have seen, that when the Supreme Court of Louisiana was asked to declare that the powers of Port Wardens were exclusive, the Chief Justice, speaking for himself and his brethren, said, that "such a power would never have been conferred knowingly" by the Legislature, and "such a

construction we cannot *for a moment* admit." (6 La., Ann. Rep., 389). Little did he dream that in less than a quarter of a century the Legislature would not only attempt to create the odious monopoly, but secure it by penal enactments.

In the case of Bartmeyer vs. Iowa, Mr. Justice Field pertinently said:

"It was believed that the fourteenth amendment had taken away the power of the State to parcel out to favored citizens the ordinary trades and callings of life, to give to A. the sole right to bake bread; to B. the sole right to make hats; to C. the sole right to sow grain or plough the fields; and thus at discretion to grant to some the means of livelihood and withhold it from others. It was supposed that there were no privileges or immunities of citizens more sacred than those which are involved in the right to 'the pursuit of happiness,' which is usually classed with life and liberty; and that in the pursuit of happiness, since that amendment became part of the fundamental law, *every one was free to follow any lawful employment without other restraint than such as equally affects all other persons.*"

If it were otherwise, then, indeed, we might again witness the scenes described in France in the last century, when the peasant was prohibited "to hunt on his own lands, to fish in his own waters, to grind at his own mill, to cook in his own oven, to dry his own clothes on his own machinery, to whet his instruments at his own grindstone, to make his own wine, his oil and his cider at his own press, * * * * or to sell his commodities at the public market,"—the exclusive

right to all these privileges being vested in the lords of the vicinage.

History, it is said, repeats itself. We trust that in respect to the privileges of this people the adage may be falsified, and the day be distant when the monopolies of past ages will be revived in America.

Respectfully submitted,
LEOVY, MONROE & HART,
EMMET D. CRAIG,
R. H. MARR,
Of Counsel for Plaintiff in Error.

In the Supreme Court

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OF THE UNITED STATES.

Ex parte CONRAD N. JORDAN *et al.*, Petitioners for mandamus in the

MATTER
of
ABRAHAM S. HEWITT *et al.*, Trustees,
vs.
THE NEW YORK & OSWEGO MIDLAND RAILROAD COMPANY *et al.*

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UNITED STATES OF AMERICA, Southern District of New York, } ss.:

228 Nathaniel A. Cowdrey, one of the said petioners, being duly sworn, for the purpose of making a further statement in aid of the petition of the said petitioners, doth depose and say as follows:

Hereto annexed, marked A, is a copy of the prayer of the original bill of complaint in the said cause and of the whole of such prayer.

Hereto annexed, marked B, is a copy of the order of the Circuit Court of the United States for the Southern District of New York, admitting the petitioner Conrad N. Jordan and his then associates, to intervene in the defence of the said suit.

And this deponent further saith, that after the appearance

229 of said petitioners, in said suit, pursuant to said order, they were recognized as defendants in the said suit, by the solicitors for the various parties, and as such were summoned and notified to appear in the various proceedings which subsequently took place for the purpose of computing and ascertaining the amount due upon the mortgage in question, and the amount of the lien of the complainants, and for the purpose of ascertaining the parties entitled to the benefit of the said mortgage; and the said petitioners were allowed to take, and did take, exceptions to the master's report in the said cause; and upon the final hearing of the cause, said petitioners were heard in support of the said exceptions, and upon all the questions passed upon or determined by the final decree, and were in all respects recognized
230 as parties entitled to be heard upon the merits of the case; that when the said petitioners, in open court, on October 2, 1876, applied for an appeal, their application was opposed by William C. Whitney, Esq., as counsel for the holders of receivers' certificates, although no appearance had been entered of record for such holders, but his right to make such opposition was recognized by the court, and such opposition prevailed.

And this deponent further saith, that the matters stated in said petition of Conrad N. Jordan and others appear of record in said Circuit Court, and that the matters hereinabove stated also appear of record in said Circuit Court, except as to said opposition of William C. Whitney, Esq.

Therefore, this deponent, one of said petitioners, on behalf
231 of himself and his co-petitioners, renews the prayer of the said petition, that said petitioners may be allowed to continue their intervention in said suit for the purpose of an appeal, and that an appeal may be allowed, pursuant to the prayer of said original petition.

Sworn to before me,
Nov. 23, 1876.

N. A. COWDREY.

LUCIUS W. HOW (21),
Notary Public,
N. Y. Co.

"A." 232

Copy of Prayer of Bill of Complaint.

"Your orators, therefore, pray the aid of this honorable court, and that the said first mortgage or deed of trust in which your orators are trustees, may be decreed to be a first lien upon all the property, railroads, branches, extensions and leased lines of the said New York & Oswego Midland Railroad Company, described in the said mortgage or deed of trust, and that the said New York & Oswego Midland Railroad Company may be decreed to pay unto your orators, as trustees, under the said first mortgage, the principal and interest due and payable upon the said bonds, together with the costs, commissions and expenses, and charges in this behalf incurred and expended; and, in default thereof, the said defendants above named, and all persons claiming and to claim under them or either of them, may be for ever barred and foreclosed of and from all equity of redemption and claim of, in, and to the said mortgaged premises, and every part and parcel thereof, and may deliver over to your orators the deeds, demises and writings relating to and concerning the same, and that all and singular the said mortgaged premises, including all railroads, branches, extensions, leased lines, appurtenances, property, effects, rights, immunities and franchises of the said New York & Oswego Midland Railroad Company may be sold under a decree of this honorable court, and that out of the money arising from the sale thereof your orators, or the holders of the bonds secured by their said mortgage, may be paid the principal and interest due thereon, and all interest money to become due thereon, together with the commission and expenses and all costs and charges by them, in this behalf sustained; and that an account may be taken of the bonds secured by the said mortgage to your orators, and of the amount due on said bonds for principal and interest, or either, and that the names of the lawful holders thereof may be ascertained, and that your orators, as trustees, as aforesaid, may be let into the possession of the said railroad and its branches, and the income, tolls, and profits of the same, and also of the depots

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and machine shops, station houses and other real estate, and all rolling stock, equipments and appurtenances connected with or forming part of the said railroad and branches, and also all other property included in and covered by the said mortgage; and as to the several persons above named, who are properly parties to this bill of complaint, and who are not citizens of the State of New York, and who may be out of the jurisdiction of this court, your orators pray that process may be issued to make them parties, if they shall come within such jurisdiction.

And your orators further pray that a receiver may be appointed according to the course and practice of this court, with the usual powers of receivers in like cases, of all the property, equitable interests, things in action, effects, moneys, receipts, and earnings, rights, privileges, franchises and immunities of the said railroad company, and of all other property included in, and covered by, the said mortgage.

And your orators further pray that a writ of injunction, issuing out of and under the seal of this honorable court, or issued by one of your honors, according to the form of the statute in such case made and provided, directing, commanding, enjoining and restraining the said defendants, and each and every one of them, from interfering with, transferring, selling or disposing of any of the property mentioned in or covered by the said mortgage, or from taking possession of, levying upon, or attempting to sell, either by judicial process or otherwise, any portion of the property embraced in or covered by the said mortgage to your orators, and that your orators may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to this honorable court shall seem meet.

And may it please your Honors to grant unto your orators a writ of injunction, issuing out of, and under the seal of this honorable court, or issued by one of your Honors, according to the form of the statute in such cases made and provided, directing, commanding, enjoining and restraining the said defendants, and each and every one of them, from interfering with, transferring, selling or disposing of any of the property mentioned in or covered by the said mortgage, or from taking possession of, levying upon or attempting to sell, either by ju-

dicial process or otherwise, any portion of the property em- 238
braced in or covered by the said mortgage to your orators.

And may it please your honors to grant unto your orators a writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the New York & Oswego Midland Railroad Company, Delos De Wolf, trustee, William H. Macy, trustee, the Mercantile Trust Company, trustee, the defendants respectively, therein and thereby commanding them on a day certain therein to be named, and under a certain penalty, to be and appear before this honorable court, then and there to answer all and singular the premises, and to stand to, perform, and abide by the said order, direction, and decree as may be made against them in the premises, as shall seem meet and agreeable to equity and good 239
conscience.

And your orators, as in duty bound, will ever pray, etc.

ALEXANDER & GREEN,
Solicitors of Complainants.

ASHBEL GREEN,
Of Counsel.

"B."

Copy of Order made June 30, 1875.

At a stated Term of the Circuit Court of the United States for the Southern District of New York, held at the Court Rooms thereof, on the 30th day 240
of June, 1875.

Present—Hon. SAMUEL BLATCHFORD, D. J.

JOHN G. STEVENS ET AL., TRUSTEES, &c.,
vs.
THE NEW YORK & OSWEGO RAILROAD CO. ET AL.

On reading and filing the petition of Conrad N. Jordan,

241 Henry Amy, John P. Crosby, Edward Livingston, Frederick P. James, and Nathaniel A. Cowdrey; and after hearing Mr. F. N. Bangs, of counsel for the petitioner, and Mr. Ashbel Green for the plaintiffs, and Mr. W. S. Opdyke for the defendant, the New York & Oswego Midland Railway Company:

It is ordered that the said petitioners have leave, and leave is hereby granted to them, to intervene in this suit for their own interests, and the interests of those whom they represent, and to that end to appear in the suit within three days, as defendants, in the same manner and with like effect as if they were named in the original and supplemental bills as defendants having or claiming an interest: Provided that said petitioners all appear by the same solicitor or solicitors, this order to be without prejudice to proceedings already had; but
242 this is not to be construed as depriving the petitioners of leave to apply for a rehearing or review of any order heretofore made, upon due notice to the parties interested; and leave is given to the plaintiffs to amend the bill by bringing in such further or other parties defendant as they may be advised, and nothing herein contained shall be considered as authorizing the said defendants to answer the original or supplemental bill, unless such authority shall be given upon special application to the court.

(A copy.)

KENNETH G. WHITE,
Clerk.

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